

# UNITED STATES PATENT AND TRADEMARK OFFICE



APPLICATION NO	). F	ILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/885,755 06/19/2001		06/19/2001	Brian Harms	QCPA567	6799
23696	759 <u>0</u>	01/16/2003			
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	house Driv	•	GHAYOUR, MOHAMMAD H		
San Diego, CA 92121-1714				ART UNIT	PAPER NUMBER
				2634	
				DATE MAILED: 01/16/2003	

Please find below and/or attached an Office communication concerning this application or proceeding.

PTO-90C (Rev. 07-01)

Office Action Summary    Saminer		Application No.	Applicant(s)					
## Examiner   Art Unit   Mohammad H Chayour   2534    ## The MAILING DATE of this communication appears on the cover sheet with the correspondence address — Period for Reply    ## A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILIND DATE OF THIS COMMUNICATION.  ## Exercision of time may be available under the processors of 37 CFR 1.136(p.) in no over. however, may a neply be timely filled    ## The Demote of employses the set but his representation of 37 CFR 1.136(p.) in no over. however, may a neply be timely filled    ## The Demote of employses the set but his representation of 19 CFR 1.136(p.) in no over. however, may a neply be timely filled    ## The Demote of employses the set but his representation of the set but his representation in the set but his representation is non-directed in the set of the set but his representation in the set but his representation is non-directed in the set of the set	•	09/885 755	HARMS FT AI					
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#### **DETAILED ACTION**

### Specification

The disclosure is objected to because of the following informalities: the continuing data (i.e. this application is a continuation of ...) should be reflected on the first page of the specification beneath "The background of the invention".

Appropriate correction is required.

### **Drawings**

Figure 1 should be designated by a legend such as --Prior Art-- because only that which is old is illustrated. See MPEP § 608.02(g). A proposed drawing correction or corrected drawings are required in reply to the Office action to avoid abandonment of the application. The objection to the drawings will not be held in abeyance.

## **Double Patenting**

A rejection based on double patenting of the "same invention" type finds its support in the language of 35 U.S.C. 101 which states that "whoever invents or discovers any new and useful process ... may obtain a patent therefor ..." (Emphasis added). Thus, the term "same invention," in this context, means an invention drawn to identical subject matter. See *Miller v. Eagle Mfg. Co.*, 151 U.S. 186 (1894); *In re Ockert*, 245 F.2d 467, 114 USPQ 330 (CCPA 1957); and *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970).

A statutory type (35 U.S.C. 101) double patenting rejection can be overcome by canceling or amending the conflicting claims so they are no longer coextensive in scope. The filing of a terminal disclaimer <u>cannot</u> overcome a double patenting rejection based upon 35 U.S.C. 101.

Claims 1-34 rejected under 35 U.S.C. 101 as claiming the same invention as that of claims 1-34 of prior U.S. Patent No. 6,249,539 B1. This is a double patenting rejection.

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Any inquiry concerning this communication or earlier communications from the examiner should be directed to Mohammad H Ghayour whose telephone number is (703) 306-3034. The examiner can normally be reached on M-TH, 7:30AM-6:00PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Stephen Chin can be reached on (703) 305-4714. The fax phone numbers for the organization where this application or proceeding is assigned are (703) 872-9314 for regular communications and (703) 872-9314 for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 305-4700.

Mohammad Ghayour January 8, 2003

PRIMARY EXAMINER